

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VI
DALLAS, TEXAS

IN THE MATTER OF:)

KOPPERS COMPANY, INC.)

HOUSTON, TEXAS)

RESPONDENT.)

PROCEEDING UNDER SECTION 106 (a))
OF THE COMPREHENSIVE ENVIRON-)
MENTAL RESPONSE, COMPENSATION,)
AND LIABILITY ACT OF 1980)
(42 U.S.C. §9606 (a)))

ADMINISTRATIVE ORDER
ON CONSENT

DOCKET NUMBER

CERCLA VI-8-85

001178

ADMINISTRATIVE ORDER ON CONSENT

I. JURISDICTION

This Administrative Order on Consent (Consent Order) is issued pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. §9606(a), and delegated to the Administrator of the United States Environmental Protection Agency (EPA) on August 14, 1981, by Executive Order 12316, 46 Fed. Reg. 42237, and further delegated to the Regional Administrator of EPA, Region VI.

The Respondent agrees to undertake all actions required by the terms and conditions of this Consent Order. The Respondent consents to and will not contest EPA jurisdiction regarding this Consent Order.

Respondent neither admits nor denies the Findings Of Fact herein; however, Respondent agrees not to challenge these findings for the purposes of this Consent Order. The Respondent agrees for the purposes of this Consent Order to waive any claim it may have that the defenses set forth in Section 107(b) of CERCLA 42 U.S.C. §9607(b), apply to it.

0-1

II. STATEMENT OF PURPOSE

In entering, into this Consent Order, the mutual objectives of EPA and Koppers Company, Inc. are:

- (1) to determine fully the nature and extent of the threat to the public health or welfare or the environment caused by the release or threatened release of hazardous substances, pollutants or contaminants from the South Cavalcade Street Site (Remedial Investigation), and
- (2) to evaluate alternatives for the appropriate extent of remedial action to prevent or mitigate the migration or the release or threatened release of hazardous substances, pollutants, or contaminants from the South Cavalcade Street Site. (Feasibility Study). The activities conducted pursuant to this Consent Order are subject to approval by EPA and shall be consistent with the National Contingency Plan, 40 CFR Part 300.68 (a)-(j) (47 Federal Register 31180 (July 16, 1982), revised at 48 Federal Register 40658 (September 8, 1983)).

001179

III. FINDINGS OF FACT

- A. The South Cavalcade Street Site (hereinafter "Site") covers about 69 acres and is located southeast of Maury-Cavalcade Street intersection in Houston, Texas, about one mile southwest of the intersection of Interstate North Loop 610 and U.S. Route 59. The Site is bounded on the east and west by the Houston Belt and Terminal railroad lines. Cavalcade Street forms the northern boundary and Collingsworth Street forms the southern boundary. A wood-treating company, National Lumber and Creosoting Co., operated the facility from 1911 to 1939. The Koppers Co., Inc. acquired ownership of the facility in 1940 and operated a wood-treating and a coal tar distillation plant until 1961. Subsequently, two-thirds of the Site has been developed by three palletized trucking firms. The remaining central one-third of the Site remains as an undeveloped meadow.
- B. Respondent Koppers Company, Inc. (hereinafter "Koppers") is a corporation organized under the laws of the State of Delaware and doing business in the State of Texas. Its headquarters is located in Pittsburgh, Pennsylvania.
- C. Koppers and its predecessors owned and operated a wood-treating and coal tar distillation facility at the Site through 1961.

- D. The Site is on the proposed National Priorities List as defined in Section 105 of CERCLA.
- E. Hazardous substances, pollutants and contaminants, as defined in Section 101 (14) of CERCLA, including benzo(a)pyrene, pentachlorophenol, and arsenic have been released into the soils and groundwaters of the Site as a result of Koppers previous wood-treating operation.
- F. In the early 1980's the Houston Metropolitan Transit Authority (MTA) became interested in the property for possible use as a light rail maintenance yard and contracted with McClelland Engineers to conduct a geotechnical survey of the Site. Creosote compounds were encountered early in the survey and as a result MTA contracted Camp, Dresser and McKee to conduct a contaminant survey of the Site. The resulting report, "Cavalcade Contaminant Survey," dated July 11, 1983, documents widespread surface and groundwater contamination. At one location contaminants were encountered at least 35 feet below the surface. A partial list of the contaminants includes anthracene, chrysene, fluoranthene, arsenic, chromium, and zinc.
- G. Arsenic exposure has been linked to increased incidence of human lung and skin cancer and acute exposure to high levels can be fatal.
- H. The surface of the Site slopes less than one percent. The developed portions drain into the storm sewer system. The undeveloped portions of the Site drain to Hunting Bayou, and White Oak Bayou, one-half and one mile away, respectively. The subsurface consist of interbedded clays, silts, sands and gravels of the Beaumont Formation. The saturated sediments of the Beaumont, Lissie and other Formations form the Gulf Coast Aquifer. In the area of the Site, this large, leaky artesian aquifer is encountered at less than 10 feet below the surface and extends to depths of greater than 1,000 feet. Based on measurements taken in early 1982, the shallow groundwater occurs from one to five feet below the lands surface, is unconfined and slopes about 27 feet per mile to the west.
- I. The hazardous substances are being released and discharged into the environment, including, but not limited to the soil, groundwater, and surface water.

001180

- J. The 1980 U.S. Census found 9,550 people living within one-half mile of the Site. Groundwater is the source of all municipal drinking water in this area. There are also a number of industrial wells in the area.
- K. Exposure to the hazardous substances found at the South Cavalcade Street facility may cause illness, disease, death, or other harmful effects to plants, animal life, and humans.

IV. CONCLUSIONS OF LAW

- A. The Site is a facility as defined in Section 101 (9) of CERCLA, 42 U.S.C. §9601 (9).
- B. The Respondent is a person as defined in Section 101 (21) of CERCLA, 42 U.S.C. §9601 (21).
- C. Wastes and constituents thereof at the Site are "hazardous substances" as defined in Section 101 (14) of CERCLA, 42 U.S.C. §9601 (14).
- D. The past, present, and potential migration of hazardous substances from the Site constitutes an actual or threatened "release" as defined in Section 101(22) of CERCLA, 42 U.S.C. §9601(22).
- E. The Respondent is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. §9067(a).

V. DETERMINATIONS

Based on the Findings of Fact and Conclusions of Law set out above, EPA has determined that:

- A. The actual and/or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health or welfare or the environment.
- B. The actions required by this Consent Order are necessary to protect the public health and welfare and the environment.

Respondent neither admits nor denies the foregoing determinations; however, Respondent agrees not to challenge these determinations for the purposes of this Consent Order.

001181

VI. WORK TO BE PERFORMED

All response work performed pursuant to this Consent Order shall be under the direction and supervision of a qualified professional engineer or a certified geologist with expertise in hazardous waste site cleanup. Prior to the initiation of site work, the Respondent shall notify EPA in writing regarding the name, title, and qualifications of such engineer or geologist and of any contractors and/or subcontractors to be used in carrying out the terms of this Consent Order.

Based on the foregoing, it is hereby AGREED TO AND ORDERED that the following work shall be performed by Respondent:

- A. The Respondent shall implement the tasks detailed in the Remedial Investigation and Feasibility Study Work Plan (RI/FS Work Plan) which has been approved by EPA and is attached to and incorporated in this Consent Order (Attachment 1). This work shall be conducted in accordance with the EPA Remedial Investigation and Feasibility Study guidance documents and with the standards, specifications, and schedule contained in the RI/FS Work Plan.
- B. Within 45 calendar days of the effective date of this Consent Order, the Respondent shall submit to EPA those documents specified as Tasks OA through OD, Sections 4.1.3 through 4.1.6 of the attached RI/FS Work Plans. These documents define the Site specific plans for Health and Safety, Quality Assurance, Field Sampling and Analytical, and Site Management.
- C. After receipt of the four documents specified above (VI.B.) by EPA, EPA shall notify the Respondent in writing of EPA's approval or disapproval of the documents, or any part thereof.
- D. Within 30 calendar days of the receipt of written notification of disapproval, the Respondent shall amend and submit to EPA a revision of those documents specified in Section VI.B. herein.
- E. Within seven calendar days of the effective date of this Consent Order, the Respondent shall commence Task 1 (Section 4.2.2) of the RI/FS Work Plan.
- F. The Respondent shall provide monthly written progress reports to EPA according to the schedule contained in the RI/FS Work Plan. At a minimum these progress reports shall: (1) describe the actions which have been taken toward achieving compliance with this Consent Order, (2) include all results of sampling and tests and all other

001182

data received by the Respondent, and (3) include all plans and procedures completed subsequent to EPA approval of the RI/FS Work Plan, during the past month as well as such actions, data, and plans which are scheduled for the next month. These reports are to be submitted to EPA by the tenth day of each month following the effective date of this Consent Order.

- G. The Respondent shall provide preliminary and final reports to EPA according to the schedule contained in the RI/FS Work Plan.
- H. EPA shall review the preliminary and final reports and within 30 calendar days of receipt by EPA of such reports, EPA shall notify the Respondent in writing of EPA's approval or disapproval of these reports or any part thereof. In the event of any disapproval, EPA shall specify in writing both the deficiencies and the reasons for such disapproval.
- I. Within 30 calendar days of receipt of EPA notification of preliminary or final report disapproval, the Respondent shall amend and submit to EPA such revised reports and perform any additional studies pursuant to EPA review. In the event of disapproval, EPA retains the right to amend such reports, to perform additional studies, and to conduct a complete Remedial Investigation and Feasibility Study pursuant to its authority under CERCLA.
- J. Whenever notice or information or EPA decision is required under the terms of this Consent Order to be delivered from one party to another, it shall be given in writing by, and directed to, the addresses specified below, unless those individuals or their successors give notice in writing to all parties to this Consent Order or another individual designated to make and receive such communications.

This shall include all reports, approvals, disapprovals, and other correspondence, required to be submitted pursuant to this Consent Order.

1) EPA:

Larry Wright
Chief, Superfund Enforcement Section
US EPA, Region VI
1201 Elm Street, Dallas, TX 75270

001183

2) Koppers Co., Inc.:

Mike Tymiak
Manager, Previously Operated Properties
Koppers Co., Inc.
1490 Koppers Building (436 Seventh Ave.)
Pittsburgh, PA 15219

- K. Respondent shall submit a copy of all notices and information required pursuant to this Consent Order to the Texas Department of Water Resources at the following address:

Charlie Faulds
Superfund Unit Head
Texas Department of Water Resources
P.O. Box 13087
Capital Station
Austin, TX 78711

- L. The EPA will take the lead community relations role at the Site. Koppers and/or its contractor shall provide assistance to the EPA if requested. Such assistance might consist of providing selected individuals to speak at meetings, preparing public meeting materials, project updates, technical summaries, and public notices. Examples of these activities are provided below:

- 1) Public Meeting Materials - Assist in preparing slide shows, graphics, and presentation materials for public meetings.
- 2) Project Updates - Provide assistance in preparing project updates for distribution by EPA to the general public.
- 3) Technical Summaries - Prepare brief technical summaries.
- 4) Public Notices - Prepare public notices and small display adds to announce public meetings.

Respondent will not begin any public relations activities without specific written instructions from the EPA.

- M. EPA may determine that tasks, including remedial investigatory work and/or engineering evaluation, are necessary as part of a Remedial Investigation and Feasibility Study in addition to EPA-approved tasks and deliverables, including reports, which have been completed pursuant to this Consent Order. Subject to the "Dispute Resolution" Section (Section XII) of this Consent Order, the Respondent shall implement any additional tasks which EPA determines are necessary as part of a Remedial Investigation and Feasibility Study and which are in addition to the tasks detailed in the RI/FS Work Plan. The additional

001184

work shall be completed in accordance with the standards, specifications, and schedule determined or approved by EPA.

VII. DESIGNATED PROJECT COORDINATORS

On or before the effective date of this Consent Order, EPA and the Respondent shall each designate a Project Coordinator. Each Project Coordinator shall be responsible for overseeing the implementation of this Consent Order. The EPA Project Coordinator will be EPA's designated representative at the Site. Except where otherwise required pursuant to paragraph VI.J. herein, communications between the Respondent and EPA concerning the activities performed pursuant to the terms and conditions of this Consent Order shall be directed through the Project Coordinators.

EPA and the Respondent each have the right to change their respective Project Coordinator. Such a change shall be accomplished by notifying the other party in writing at least five calendar days prior to the change.

The EPA designated "On-Scene-Coordinator", who may be the EPA Project Coordinator, shall have the authority vested in the On-Scene-Coordinator by the National Contingency Plan; 40 CFR Part 300 et sec., 47 Federal Register 31180 July 16, 1982. This includes the authority to halt, conduct, or direct any tasks required by this Consent Order and/or any response actions or portions thereof when conditions present an immediate risk to public health or welfare or the environment. The absence of the EPA Project Coordinator from the Site shall not be cause for the stoppage of Work.

VIII. QUALITY ASSURANCE

The Respondent shall use quality assurance, quality control, and chain of custody procedures in accordance with the RI/FS Work Plan throughout all sample collection and analysis activities. The Respondent shall consult with EPA in planning for, and prior to, all sampling and analysis as detailed in the RI/FS Work Plan. The Respondent shall ensure that EPA personnel are allowed reasonable access to the laboratory utilized by the Respondent for analysis of samples collected pursuant to this Consent Order. In addition, the laboratory shall analyze a maximum of forty (40) samples per year as provided by EPA under its Hazardous Waste Performance Evaluation Program.

IX. SITE ACCESS

To the extent that the Site is presently owned by parties other than those bound by this Consent Order, the Respondent shall obtain or will use its best reasonable efforts to obtain

001185

site access agreements from the present owners within thirty (30) calendar days of the effective date of this Consent Order. Such agreements shall provide reasonable access to EPA and/or its authorized representatives. In the event that site access agreements are not obtained within the time referenced above, the Respondent shall notify EPA regarding both the lack of and the efforts to obtain, such agreements within 30 calendar days of the effective date of this Consent Order. In such an event, EPA may assist the Respondent in obtaining such access, including, but not limited to seeking the cooperation and assistance of TDWR.

If Respondent has used its best reasonable efforts to secure access to properties, failure to obtain access shall not be deemed a breach of this Consent Order and Respondent shall not be subject to any fines or penalties because of such failure. In such an event, any times provided for in the Consent Order shall be extended for a time equal to the time Respondent was denied access to a property; provided, however, that the provisions of this paragraph and any rights of Respondent hereunder are contingent upon compliance by Respondent with the specific conditions and requirements of Section XIV of this Consent Order entitled "FORCE MAJEURE". Failure of the Respondent to comply with Section XIV of this Consent Order in such an event, shall render this paragraph void.

001186

X. SAMPLING, ACCESS, AND DATA/DOCUMENT AVAILABILITY

The Respondent shall make the results of all sampling and/or tests or other data generated by the Respondent, or on the Respondent's behalf, with respect to the implementation of this Consent Order, available to EPA and shall submit these results in monthly progress reports as described in Section VI of this Consent Order. EPA will make available to the Respondent the results of sampling and/or tests or other data similarly generated by EPA.

At the request of EPA, the Respondent shall allow split or duplicate samples to be taken by EPA and/or its authorized representatives, of any samples collected by the Respondent pursuant to the implementation of this Consent Order. The Respondent shall notify EPA not less than 48 hours, not including weekends and holidays, in advance of any sample collection activity.

EPA and/or any EPA authorized representative shall have the same authority as Respondent obtains pursuant to Section IX herein, to enter and freely move about all property at the Site at all reasonable times for the purposes of, among other things: inspecting records, operating logs, and contracts related to the Site; reviewing the progress of the Respondent in carrying out the terms of this Consent Order; conducting such tests as EPA or

the Project Coordinator deem necessary; using a camera, sound recording or other documentary type equipment; and verifying the data submitted to EPA by the Respondent. The Respondent shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order. All parties with access to the Site pursuant to this paragraph shall comply with all approved health and safety plans.

Nothing in this Section or this Consent Order shall limit or bar the exercise by EPA of its statutory right of entry and inspection pursuant to Section 104 of CERCLA, 42 U.S.C. §9604, and Section 3007 of RCRA, 42 U.S.C. §6927, or any other statute.

The Respondent may assert a confidentiality claim, if appropriate, covering part or all of the information requested by this Consent Order pursuant to 40 C.F.R. §2.203(b). Analytical data shall not be claimed as confidential by the Respondent. Information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA without further notice to the Respondent.

XI. RECORD PRESERVATION

EPA and the Respondent agree that each shall preserve, during the pendency of this Consent Order and for a minimum of six (6) years after the final CERCLA response cost (including, but not limited to, all costs of removal or remedial actions) is incurred, all records and documents in their possession or in the possession of their divisions, employees, agents, accountants, contractors, or attorneys which relate in any way to the Site, despite any document retention policy to the contrary. After this six (6) year period, the Respondent shall notify EPA within thirty (30) calendar days prior to the destruction of any such documents. Upon request by EPA, the Respondent shall make available to EPA such records or true and correct copies of any such records.

XII. DISPUTE RESOLUTION

If the Respondent objects to any EPA notice of disapproval or decision made pursuant to this Consent Order, including decisions relating to any proposed modification of the work plan or the scope of work, the Respondent shall notify EPA in writing of its objections within fourteen (14) days of receipt of the decision. EPA and the Respondent then have an additional fourteen (14) days from the receipt by EPA of the notification

001187

of objection to reach agreement. If agreement cannot be reached on any issue within this fourteen (14) day period, EPA shall provide a written statement of its decision to the Respondent, which shall be deemed a final agency action for purposes of judicial review. Any judicial review of the EPA decision shall be sought by parties in the United States District Court for the Northern District of Texas. In any action for any reason, the EPA decision is presumed valid. Any times provided for in the Consent Order shall be extended for a time equal to the time the dispute resolution process was in effect, provided however that such extension shall not include any time beyond (10) ten days after final agency action and before the commencement of a suit in said United States Court.

XIII. DELAY IN PERFORMANCE/STIPULATED PENALTIES

For each week of delay in performance of the requirements of this order not excused by Section XIV, the Respondent shall pay into the United States Treasury, the sums set forth below as stipulated penalties. Checks should be addressed to:

U.S. Environmental Protection Agency
Accounting Operations Office (PM-226)
P.O. Box 2971, Room M-3419
Washington, D.C. 20013
Attention: (Collection Officer for Superfund)

Stipulated penalties shall accrue in the amount of \$1,000.00 for the first week and \$2,000.00 for each week thereafter for failure to submit a deliverable or comply with a schedule as required by this Consent Order.

The stipulated penalties set forth in this Section do not preclude EPA from electing to pursue any other remedies or sanctions which may be available to EPA by reason of the Respondent's failure to comply with any of the requirements of this Consent Order. Such remedies and sanctions include a suit for statutory penalties as authorized by Section 106 of CERCLA, a federally-funded response action, and a suit for reimbursement of costs incurred by the United States and the State of Texas.

Failure of EPA to either approve or disapprove submissions required of Respondent pursuant to this Consent Order in the time period allotted shall toll any time running against Respondent relative to the submission. Any delays caused by the EPA's failure to timely approve or disapprove any such submission shall not be deemed a breach of this Consent Order and Respondent shall not be subject to any fines or penalties because of such delays; provided, however, that the provisions of this paragraph and any rights of Respondent hereunder are contingent upon compliance by Respondent with the specific

00118

conditions and requirements of Section XIV of this Consent Order entitled "FORCE MAJEURE". Failure of the Respondent to comply with Section XIV of this Consent Order in such an event, shall render this paragraph void.

XIV. FORCE MAJEURE

If any event occurs which causes delay in the achievement of the requirements of this Consent Order, the Respondent shall have the burden of proving that the delay was caused by circumstances beyond the reasonable control of the Respondent which could not have been overcome by due diligence. The Respondent shall promptly notify EPA's Project Coordinator orally and shall within seven (7) calendar days of oral notification to EPA, notify EPA in writing of the anticipated length and cause of the delay, the measures taken and/or to be taken to prevent or minimize the delay, and the timetable by which the Respondent intends to implement these measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of the Respondent, the time for performance hereunder shall be extended for a period equal to the delay resulting from such circumstances. The Respondent shall adopt all reasonable measures to avoid or minimize delay. Failure of the Respondent to comply with the notice requirements of this paragraph shall render this paragraph void and constitute a waiver of the Respondent's right to request a waiver of the requirements of this Consent Order. Increased costs of performance of the terms of this Consent Order or changed economic circumstances shall not be considered circumstances beyond the control of the Respondent.

In the event that EPA and the Respondent cannot agree that any delay in the achievement of the requirements of this Consent Order, including the failure to submit any report or document, has been or will be caused by circumstances beyond the reasonable control of the Respondent, the dispute shall be resolved in accordance with the provisions of the "Dispute Resolution" Section (Section XII) of this Consent Order.

XV. RESERVATION OF RIGHTS

Notwithstanding compliance with the terms of this Consent Order, including the completion of an EPA approved Remedial Investigation and Feasibility Study, the Respondent is not released from liability, if any, for any actions beyond the terms of this Consent Order taken by EPA respecting the Site. EPA reserves the right to take any enforcement action pursuant to CERCLA and/or any available legal authority, including the right to seek injunctive relief, monetary penalties, and punitive damages for any violation of law or this Consent Order. Except for Respondent's agreement and consent contained in Section I of this Consent Order styled "JURISDICTION", the

001189

Respondent, and EPA expressly reserve all rights and defenses that they may have in law and equity against each other and any third party, including EPA's right both to disapprove of work performed by the Respondent and to request that the Respondent perform tasks in addition to those detailed in the RI/FS Work Plan, as provided in this Consent Order. In the event that the Respondent declines to perform any task, including additional and/or modified tasks, EPA will have the right to undertake any remedial investigation and/or feasibility study work. In addition, EPA reserves the right to undertake removal actions and/or remedial actions, at any time. In either event, EPA reserves the right to seek reimbursement from the Respondent thereafter for such costs incurred by the United States or the State of Texas. Nothing in this Consent Order is to be construed as a release, waiver or exhaustion of any claim or right, including the right of contribution, Respondent may have against a third party.

XVI. REIMBURSEMENT OF COSTS

EPA reserves the right to bring an action against the Respondent pursuant to Section 107 of CERCLA for recovery of all response and oversight costs incurred by the United States and the State of Texas related to this Consent Order and not reimbursed by the Respondents, as well as any other past and future costs incurred by the United States and the State of Texas in connection with response activities conducted pursuant to CERCLA at this Site.

XVII. OTHER CLAIMS

Nothing in this Consent Order shall constitute, or be construed as, a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, or corporation not a signatory to this Consent Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Site.

This Consent Order does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA.

XVIII. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable local, state, and federal laws and regulations unless an exemption from such requirements is specifically provided in this Consent Order.

XIX. INJURIES/DAMAGES TO THIRD PARTIES

The United States Government shall not be liable for any

001190

injuries or damages to persons or property resulting from acts or omissions of Respondent, its officers, directors, employees, agents, receivers, trustees, successors, assigns or contractors, in carrying out activities pursuant to this Consent Order, nor shall the United States Government be held out as a party to any contract entered into by Respondent in carrying out activities pursuant to this Consent Order.

XX. PUBLIC COMMENT

Upon submittal to EPA of an approved Feasibility Study Final Report, EPA shall make both the Remedial Investigation Final Report and the Feasibility Study Final Report available to the public for review and comment for, at a minimum, a twenty-one (21) day period, pursuant to EPA's Community Relations Policy. Following the public review and comment period, EPA shall notify the Respondent which remedial action alternative is approved for the Site.

XXI. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

In consideration of the communications between the Respondent and EPA prior to the issuance of this Consent Order concerning its terms, the Respondent agrees that there is no need for a settlement conference prior to the effective date of this Consent Order. Therefore, the effective date of this Consent Order shall be the date on which it is signed by the EPA.

This Consent Order may be amended by mutual agreement of EPA and the Respondent. Such amendments shall be in writing and shall have as the effective date, that date on which such amendments are signed by EPA.

Any reports, plans, specifications, schedules, and attachments required by this Consent Order are, upon approval by EPA, incorporated into this Consent Order. Any non-compliance with such EPA approved reports, plans, specifications, schedules, and attachments shall be considered a failure to achieve the requirements of this Consent Order and will subject the Respondent to the provisions included in the "Delay in Performance/ Stipulated Penalties" Section of this Consent Order.

No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, and any other writing submitted by the Respondent will be construed as relieving the Respondent of its obligation to obtain such formal approval as may be required by this Consent Order.

XXII. PARTIES BOUND

This Consent Order shall apply to and be binding upon the Respondent and EPA, their agents, successors, and assigns and

001191

upon all persons, contractors, and consultants acting under or for either the Respondent or EPA or both. The Respondent will remain the Respondent under this Consent Order and will be responsible for carrying out all activities required of the Respondent under this Consent Order. No change in ownership or corporate or partnership status relating to the Site will in any way alter the status of Respondent's responsibility under this Consent Order.

XXIII. NOTICE TO THE STATE

EPA has previously notified the State of Texas through the Texas Department of Water Resources of the issuance of this Consent Order pursuant to the requirements of Section 106(a) of CERCLA.

XXIV. TERMINATION AND SATISFACTION

The provisions of this Consent Order shall be deemed satisfied upon the Respondent's receipt of written notice from EPA that the Respondent has demonstrated, to the satisfaction of EPA, that all of the terms of this Consent Order, including any additional tasks which EPA has determined to be necessary, have been completed.

XXV. COVENANT NOT TO SUE

Upon termination of this Consent Order pursuant to Section XXIV of this Consent Order, EPA covenants not to sue the Respondent for costs incurred by EPA associated with the conduct and completion of the Remedial Investigation and Feasibility Study (RI/FS) required by this Consent Order, except as otherwise reserved herein. Nothing in this agreement shall be construed as barring or limiting EPA from recovering costs incurred by the United States and the State of Texas in connection with further CERCLA RI/FS response action at the Site where previously unknown or undetected conditions that arise or are discovered at the Site after the effective date of this Consent Order may present an imminent and substantial endangerment to public health, welfare or the environment; or where EPA receives new information, not available at the effective date of this Consent Order concerning the scientific determinations on which the settlement was premised indicating that Site conditions may present an imminent and substantial endangerment to the public health or welfare or the environment; or where Respondent has been unable to complete to EPA's satisfaction any requirement of this Consent Order due to failure to obtain Site access, to force majeure, or for any other reason. Nothing in this Consent Order shall bar or limit any CERCLA response other than RI/FS, or any EPA enforcement action or action to recover costs incurred in,

001192

or associated with such response. Nothing in this Consent Order shall limit or bar EPA recovery of any costs incurred by the United States or the State of Texas in the oversight of this Consent Order and its requirements, including but not limited to enforcement costs and attorney's fees.

IT IS SO AGREED AND ORDERED:

BY: Charles P. Dorsey
Koppers Company, Inc. Title
Charles P. Dorsey Vice-President

3/21/85
Date

BY: Dick Whittington
U.S. Environmental Protection Agency
Dick Whittington, P. E.
Regional Administrator

3/28/85
Date

Effective Date: March 28, 1985

001193

CERTIFICATE OF SERVICE

I hereby certify that the original of the attached EPA Administrative Order on Consent concerning the South Cavalcade, Houston, Texas site, Docket Number CERCLA VI-8-85, was hand delivered by me to the Regional Hearing Clerk, Region VI, U.S. EPA, Dallas, Texas and that a true and correct copy of the same was served by U.S. Certified Mail: Return Receipt Requested, upon the following parties this 28th day of March, 1985.

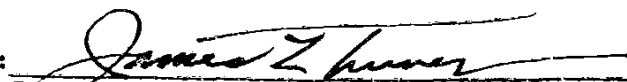
Koppers Company, Inc.
c/o CT Corporation System
Registered Agent for Service of Process
1601 Elm Street, Suite 3700
Dallas, TX 75201

Charles P. Dorsey
Vice President
Koppers Company, Inc.
Koppers Building
Pittsburgh, Pennsylvania 15219

Thomas Sivak
Law Dept., Koppers Company, Inc.
Koppers Building
Pittsburgh, Pennsylvania 15219

Charles Nemir
Executive Director
Texas Department of Water Resources
P.O. Box 13087
Capitol Station
Austin, Texas 78711

By:



James L. Turner
Attorney, Office of Regional Counsel

001194